

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THOMAS JERMYN, on behalf of himself
and all others similarly situated,

Docket No. 08 CV 00214

Plaintiff,

REPLY DECLARATION

- against -

BEST BUY STORES, L.P.,

Defendant.
-----X

MICHAEL L. BRAUNSTEIN, an attorney duly admitted to practice before this Court, hereby declares the truth of the following statements, upon information and belief, under the penalty of perjury:

1. I am an attorney with the law firm Kantrowitz, Goldhamer & Graifman, P.C., attorneys for the plaintiff Thomas Jermyn, on behalf of himself and all others similarly situated ("Jermyn" or "plaintiff") and as such I am fully familiar with the matters set forth herein.
2. This declaration is submitted in reply to defendant's opposition and in further supports of plaintiff's motion for: (1) class certification; (2) appointing Thomas Jermyn as the Class representative; and (3) appointing the firms Kantrowitz, Goldhamer & Graifman, P.C. and Green & Pagano, LLP as Class counsel. Additionally, a reply memorandum of law is simultaneously being submitted under seal pursuant to a Protective Order
3. On May 2, 2008, Jermyn appeared for a deposition. A true and accurate copy of relevant portions of Mr. Jermyn's deposition transcript is attached as Exhibit 29.

WHEREFORE, it is respectfully requested that the instant motion for: (1) class certification; (2) appointing Thomas Jermyn as the Class representative; and (3) appointing the firms Kantrowitz, Goldhamer & Graifman, P.C. and Green & Pagano, LLP as Class counsel be granted in its entirety.

Dated: Chestnut Ridge, New York
July 3, 2008



MICHAEL L. BRAUNSTEIN

EXHIBIT 29

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - - X
5 THOMAS JERMYN, on behalf of himself and
6 all others similarly situated,
7 Plaintiff,

8
9 against,

Docket No.
08 CV 00214

10 BEST BUY STORES, L.P.,

11 Defendant.
12 - - - - - X

13 DATED: May 2, 2008
14 Chestnut Ridge, New York
15 9:10 a.m. - 1:20 p.m.
16 Patrick M. DeGiorgio, Reporter
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25

DEPOSITION
OF
THOMAS JERMYN

Page 2	Page 4
<p>1 2 APPEARANCES: 3 4 KANTROWITZ, GOLDHAMER & GRAIFMAN, P.C. Attorneys for Plaintiff 5 747 Chestnut Ridge Road Chestnut Ridge, New York 10977 6 BY: MICHAEL L. BRAUNSTEIN, ESQ., of Counsel 7 -and- 8 GREEN & PAGANO, L.L.P. Co-Counsel for Plaintiff 522 Route 18 9 East Brunswick, New Jersey 08816 10 11 ROBINS, KAPLAN, MILLER & CIRESI, L.L.P. Attorneys for Defendant 12 2800 LaSalle Plaza 800 LaSalle Avenue 13 Minneapolis, Minnesota, 55402-2015 14 BY: JENNIFER G. DAUGHERTY, ESQ., of Counsel 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 THOMAS JERMYN, the Plaintiff 3 herein, after having been first duly sworn 4 by Patrick M. DeGiorgio, a Notary Public of 5 the State of New York, was examined and 6 testified as follows: 7 oOo 8 EXAMINATION BY MS. DAUGHERTY: 9 Q. Good morning, Mr. Jermyn. 10 A. Good morning. 11 Q. Can you please state your full name for the 12 record? 13 A. Thomas Jermyn. 14 Q. What is your address? 15 A. 320 West 119th Street, Apartment 1, New 16 York, New York 10026. 17 Q. I believe I introduced myself to you 18 earlier. I'm Jennifer Daugherty. I'm one 19 of the attorneys for Best Buy in this 20 matter. Have you ever had your deposition 21 taken before? 22 A. Yes. 23 Q. You have? 24 A. Yes. 25 Q. When was that?</p>
Page 3	Page 5
<p>1 2 STIPULATIONS 3 4 IT IS HEREBY STIPULATED AND AGREED by 5 and between the attorneys for the respective 6 parties hereto, that the sealing and filing 7 of the witness' deposition are hereby 8 waived. 9 10 11 IT IS FURTHER STIPULATED AND AGREED by 12 and between the attorneys for the respective 13 parties hereto that all objections, except 14 as to the form of the question, are reserved 15 to the time of trial. 16 17 18 IT IS FURTHER STIPULATED AND AGREED by 19 and between the attorneys for the respective 20 parties hereto that they may sign this 21 deposition before any duly qualified Notary 22 Public. 23 24 oOo 25</p>	<p>1 THOMAS JERMYN 2 A. 1991. 3 Q. Okay. 4 A. Approximately. 5 Q. Any other time besides 1991 and today? 6 A. No. 7 Q. By deposition, I mean where you are sitting 8 and an attorney is asking you questions and 9 you have a court reporter sitting there for 10 the purposes of a lawsuit? 11 A. Yes. 12 Q. What was that deposition in connection with? 13 A. Car accident. 14 Q. Did you bring a lawsuit against someone or 15 an entity? 16 A. Yes. 17 Q. Were you the plaintiff in that case? 18 A. Yes. 19 Q. Tell me about that case. 20 A. It was a car accident. I was rear ended. 21 Q. Who did you bring the lawsuit against? 22 A. The driver of the vehicle and Allstate 23 Insurance Company. 24 Q. Were you injured in that case? 25 A. Yes.</p>

2 (Pages 2 to 5)

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<p>1 THOMAS JERMYN</p> <p>2 people were trying to get the benefit of</p> <p>3 Best Buy's Price Match Guarantee?</p> <p>4 A. Right.</p> <p>5 Q. Do you know who wrote these blogs?</p> <p>6 A. No.</p> <p>7 Q. Have you ever tried to contact anybody that</p> <p>8 wrote these blogs?</p> <p>9 A. No.</p> <p>10 Q. Did you ever write a blog?</p> <p>11 A. No.</p> <p>12 Q. Ever write a comment to a blog?</p> <p>13 A. No.</p> <p>14 Q. With respect to these blogs, you simply just</p> <p>15 read them?</p> <p>16 A. Just read them.</p> <p>17 Q. I want to go into the facts of what happened</p> <p>18 in this case, sir. I understand that you</p> <p>19 purchased a camera on May 13th, 2005; is</p> <p>20 that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Why don't you just start at the beginning</p> <p>23 and tell me what happened?</p> <p>24 A. I wanted to buy a Nikon D70 and one of the</p> <p>25 reasons I chose Best Buy was because of the</p>	<p>1 THOMAS JERMYN</p> <p>2 buy it at Best Buy. So I made a printout of</p> <p>3 the advertisement from Tristate, their</p> <p>4 competitor, took it there and then they</p> <p>5 informed me that they wouldn't honor the</p> <p>6 guarantee, they wouldn't reduce the price</p> <p>7 and they would charge me the restocking fee</p> <p>8 if I tried to return it. I figure outside</p> <p>9 the price with the restocking fee from the</p> <p>10 other camera place and it was still 860 plus</p> <p>11 180, it came out to 1,040 as opposed to</p> <p>12 1,199 minus a hundred or 1,099. It was</p> <p>13 still \$50 or less with paying the restocking</p> <p>14 fee. They railroaded me out of the store</p> <p>15 and I tried to get information from them</p> <p>16 saying what is it about this case that</p> <p>17 doesn't fit your guarantee and they wouldn't</p> <p>18 give me an answer. Nobody could give me a</p> <p>19 square answer, so I mentioned that I was an</p> <p>20 attorney and I was going to pursue this case</p> <p>21 and they said fine, go ahead. They didn't</p> <p>22 seem to be worried about that. It almost</p> <p>23 looked like they had dealt with this</p> <p>24 situation many times the way they handled</p> <p>25 it. Like I said, it was very robotic and</p>
Page 39	Page 41
<p>1 THOMAS JERMYN</p> <p>2 Price Match Guarantee. There was a store</p> <p>3 near to where I lived and I went in there</p> <p>4 and bought the camera knowing that they --</p> <p>5 knowing the Price Match Guarantee. I</p> <p>6 figured I would look around in the next</p> <p>7 thirty days or fourteen days and see if</p> <p>8 anybody has it for less, the D70, in the</p> <p>9 meantime. I asked them before I bought it,</p> <p>10 they said no problem. I wasn't aware of</p> <p>11 anybody that had any problems at Best Buy</p> <p>12 prior to that. So a week later walking near</p> <p>13 the store, because I worked in that area and</p> <p>14 walked by it a lot, I happened to walk by</p> <p>15 Tristate Camera which is about three blocks</p> <p>16 away from the Best Buy store and saw the</p> <p>17 camera and asked them how much it was. I</p> <p>18 thought it was 959 before the hundred dollar</p> <p>19 rebate. It was May 20th, so it was within</p> <p>20 the statutory period on the Best Buy</p> <p>21 guarantee. There were no restrictions or no</p> <p>22 fine print because of the type of material.</p> <p>23 They limited it from thirty to fourteen</p> <p>24 days, so I was still within that. I brought</p> <p>25 the camera back to Best Buy fully wanting to</p>	<p>1 THOMAS JERMYN</p> <p>2 there was no listening to what I had to say.</p> <p>3 I would have gladly given the business to</p> <p>4 Best Buy had they lowered the price. I</p> <p>5 tried to reason with the manager of the</p> <p>6 store saying I'm a good customer, I bought</p> <p>7 many things here, why not reward someone who</p> <p>8 is a loyal customer rather than lose a</p> <p>9 customer and they didn't care what I said.</p> <p>10 They just kind of wanted me out of the store</p> <p>11 before I made a scene. I returned the</p> <p>12 camera, bought it at Tristate, paid the</p> <p>13 restocking fee, it was still \$49 less and</p> <p>14 then I started searching around for my --</p> <p>15 looking at my legal remedies. A year and a</p> <p>16 half later I found Graifman's office.</p> <p>17 Q. I believe you said it was \$59 less at one</p> <p>18 point and now you just said \$49 less.</p> <p>19 A. It was 859 after the rebate from Tristate</p> <p>20 and it was 1,099 after the rebate from Best</p> <p>21 Buy. 859 plus 180 for the restocking fee</p> <p>22 came out to be 1,059. So it was still</p> <p>23 cheaper.</p> <p>24 Q. Let's back up here. On May 13th, did you</p> <p>25 have --</p>

11 (Pages 38 to 41)

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1 THOMAS JERMYN
2 shows what you are telling me and then I did
3 and then they still wouldn't honor it.
4 Q. Okay.
5 A. When I went in there on the 20th.
6 MR. BRAUNSTEIN:
7 Listen to the questions and answer the
8 questions.
9 MS. DAUGHERTY:
10 Q. When did you go into Best Buy next after May
11 13th, 2005?
12 A. Probably on the 18th or maybe on the 19th.
13 Q. Let's say you went in on the 18th or 19th.
14 You had already been in the Tristate store?
15 A. Yes.
16 Q. You saw that they offered the same camera at
17 a different price?
18 A. Yes.
19 Q. At the time you went into Best Buy on May
20 18th or 19th it's true you had not yet
21 printed this off online?
22 A. Yes.
23 Q. You went into Best Buy. What did you do?
24 A. I said your guarantee says that you will
25 honor lower prices or match lower prices

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1 THOMAS JERMYN
2 with the 10 percent -- and add 10 percent
3 onto the lowest price -- I mean 10 percent
4 discount to the lowest price. Here is what
5 I got at Tristate Cameras -- no, around the
6 corner they have it for less. They said you
7 have to get something in writing. I think I
8 went back and got it in writing and had to
9 go back again.
10 Q. Who did you talk to when you went into the
11 Best Buy store on May 18th or 19th?
12 A. It wasn't the manager. I remember seeing
13 the manager one time only, so it was just
14 somebody at customer service.
15 Q. Did you go straight to the customer service
16 desk?
17 A. I think so.
18 Q. You walked into the Best Buy on the 18th or
19 19th and went to the customer service desk;
20 right?
21 A. Yes.
22 Q. You said I purchased a camera here the other
23 day, around the corner at Tristate they have
24 a lower price?
25 A. Yes.

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1 THOMAS JERMYN
2 Q. He or she, do you remember?
3 A. I think it was a lady. She said bring it in
4 in writing.
5 Q. You are sure this lady at the customer
6 service desk was not a manager?
7 A. I'm not sure.
8 Q. In any event -- (interrupted)
9 A. I don't know how many managers they have.
10 On the 20th when someone came out it was a
11 man when I asked to see a manager.
12 Q. In any event, on the 18th or 19th you did
13 not ask to see a manager?
14 A. No.
15 Q. You spoke with the person that was at the
16 customer service desk?
17 A. Yes.
18 Q. She said you need to get something in
19 writing to show what the price is at
20 Tristate?
21 A. Yes.
22 Q. You left the store?
23 A. Yes.
24 Q. And then you went to your home; is that
25 right, and printed this out?

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1 THOMAS JERMYN
2 A. Yes.
3 Q. When I'm talking about this, I mean Exhibit
4 B, the Tristate advertisement?
5 A. Yes.
6 Q. Did you go to Tristate again between Best
7 Buy on May 18th or 19th and when you
8 actually purchased a Tristate Camera?
9 A. No.
10 Q. Just to be clear, when you went into
11 Tristate before May 18th or 19th, but after
12 you purchased the Best Buy camera, did you
13 specifically ask Tristate if they had the
14 same prices online that they had in the
15 brick and mortar store or did you not know?
16 A. I don't know. I don't recall.
17 Q. You don't specifically remember asking them
18 if I go on your website will you have the
19 same prices?
20 A. I think I did. I remember the guy I spoke
21 about, I remember the salesperson there, he
22 said yeah, you know, we have the same
23 prices.
24 Q. I don't want you to guess. If you don't
25 recall, that's fine.

24 (Pages 90 to 93)

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- against -

Docket No. 08 CV

00214

BEST BUY STORES, L.P.,

Defendant.
-----X

**REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF MOTION
FOR CLASS CERTIFICATION**

On the Brief:
Michael L. Braunstein
Gary S. Graifman

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SOUTHERN DISTRICT OF NEW YORK

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- against -

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Defendant.

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CONFIDENTIAL INFORMATION

SUBJECT TO PROTECTIVE ORDER

CASE NO. 08 CV 00214

(JUDGE COLLEEN MCMAHON)

THIS REPLY MEMORANDUM OF LAW IS BEING SUBMITTED UNDER SEAL

AND IS NOT TO BE OPENED NOR

THE CONTENTS THEREOF DISPLAYED, COPIED OR REVEALED,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THOMAS JERMYN, on behalf of himself
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Docket No. 08 CV 00214

Plaintiff,

AFFIDAVIT OF SERVICE

- against -

BEST BUY STORES, L.P.,

Defendant.
-----X

STELLA GILSENAN, being duly sworn, deposes and states as follows:

That deponent is not a party to this action, is over 18 years of age and resides in Pearl River, New York. On the 3rd day of July, 2008, your deponent served Plaintiff's Reply Memorandum of Law and Reply Declaration of Michael L. Braunstein by ECF filing and by overnight courier upon:

Jennifer G. Daugherty
Robins, Kaplan, Miller & Ciresi L.L.P.
2800 LaSalle Plaza
800 Lasalle Avenue
Minneapolis, MN 55402-2015

Stella Gilsean
STELLA GILSENAN

Sworn to before me this
3rd day of July, 2008

Cassandra A. Krikelis
Notary Public

CASSANDRA A. KRIKELIS
Notary Public, State of New York
Qualified in Ulster County
Registration #01KR6142210
Commission Expires 03/13/2010